

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Promoting Diversification of Ownership in the
Broadcasting Services

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MB Docket No. 07-294

COMMENTS

**SYRACUSE UNIVERSITY
UNIVERSITY OF KANSAS**

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SUMMARY

Syracuse University and the University of Kansas (the “Universities”) submit their comments in opposition to the Commission’s proposal to require that noncommercial broadcasters include a CORES FRN for all individuals reported in their Form 323-E Ownership Report. Many noncommercial licensees, such as large public and private universities, have unique “ownership” structures making application of a CORES FRN requirement for individuals reported in Form 323-E more burdensome and less practical than for commercial broadcast licensees. There are no similar potential benefits to a CORES FRN requirement for noncommercial broadcasters compared to the commercial context. Because the Commission continues to lack a meaningful definition of what constitutes “ownership” in the noncommercial context, and the governing boards of large educational institutions generally have no actual involvement in the operation of their school’s noncommercial stations, there is no nexus between a CORES FRN requirement and the Commission’s stated purpose for the information – obtaining reliable data to track media ownership trends to better promote diverse ownership of broadcast stations.

Nonetheless, if the Commission is intent on requiring noncommercial broadcasters to include FRN information for each individual listed in their Form 323-E, the Commission must allow the continued availability of a Special Use FRN. Special Use FRN’s provide a sufficiently unique identifier for the Commission’s stated purposes and will allow noncommercial broadcasters to meet their Form 323-E filing obligations when CORES FRN information is not otherwise available.

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**COMMENTS OF SYRACUSE UNIVERSITY AND
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Syracuse University (“SU”) and the University of Kansas (“KU”) (together referred to as the “Universities”), by counsel, hereby submit their comments on the Commission’s proposal to require the licensees of noncommercial stations to provide an FCC Registration Number (FRN) for all individuals reported on FCC Form 323-E, Ownership Report for Noncommercial Broadcast Stations. This proposal and its corollary requirements, if adopted, would impose a significant burden on many noncommercial licensees, including the Universities, that may not be possible to meet and that has no demonstrated relationship to the Commission’s stated purpose for the information collected.

INTRODUCTION

KU is a major public research and teaching institution with almost 28,000 students that operates through a diverse, multi-campus system. The nine-member Kansas Board of Regents governs KU.¹ The Governor of Kansas appoints members of the Board to staggered terms. The Board of Regents also has a President/CEO in addition to the nine appointed members. The Board appoints KU’s Chancellor who has responsibility for directing KU’s operation. KU has a

¹ The comments of KU submitted herein are provided solely in its capacity as the licensee of its noncommercial broadcast stations and do not necessarily represent the views of the Kansas Board of Regents.

shared system of governance that, in addition to the Chancellor, includes at least 18 administrative leaders, 12 academic deans and four constituent governance senates.² KU is the licensee of five noncommercial FM broadcast stations in Kansas. Four of these stations are professionally managed and together form Kansas Public Radio (KANU, Lawrence; KANH, Emporia; KANQ, Chanute; and KANV, Olsburg). The fifth station is student-run KJHK Lawrence. KU also is the licensee of a student-run low power television station that serves as a training ground for the university's journalism students (KUJH-LP, Lawrence).

SU is a private, nonsectarian university founded in 1870 with a total student enrollment of more than 21,000 students. In addition to its main campus in Central New York, SU provides educational opportunities in numerous centers in the U.S. and around the globe, including major hubs in New York City, Washington, D.C. and Los Angeles.³ A Board of Trustees composed of 60 voting trustees, 53 life trustees, and four honorary trustees governs the university. The Board of Trustees is legally responsible for protecting and managing SU's physical and financial assets, has the authority to oversee its academic programs and administrative operations, and appoints the Chancellor who implements the Board's policies and administers the university as a whole.⁴ The Chancellor chairs the Chancellor's Cabinet that is involved in budget and policy decisions for the university and is composed of 19 senior-level administrators who each head a major division of the university.⁵ SU is the licensee of noncommercial FM station WAER, Syracuse, which is operated by a professional staff.

² <http://www.ku.edu/about/leadership>; and <http://www.provost.ku.edu/sites/provost.drupal.ku.edu/files/docs/lawrencecampus.pdf>.

³ <http://syr.edu/about/facts.html>.

⁴ <http://syr.edu/chancellor/bot>.

⁵ <http://syr.edu/chancellor/cabinet/>

In its *Sixth Further Notice of Propose Rulemaking*, FCC 12-166, released January 3, 2013 (“*Sixth Further Notice*”), the Commission sets forth several proposals and seeks comments on matters primarily pertaining to information collected in FCC Form 323, Ownership Report for Commercial Broadcast Station. These include seeking further comment on the existing requirement that licensees and other entities provide a CORES FRN⁶ for all attributable individuals reported in Form 323; the Commission’s proposal to eliminate the interim “Special Use” FRN as an alternative method for obtaining an FRN without providing a social security or tax payer identification number; and permitting filers to use a Special Use FRN only if they are unable to obtain a CORES FRN from an individual with reportable interests. In a single paragraph of the *Sixth Further Notice* (para. 21), the Commission seeks comment on its proposal to require noncommercial broadcasters to include a CORES FRN for all entities and individuals reported on Form 323-E.

With respect to noncommercial broadcasters, the *Sixth Further Notice* follows on the Commission’s earlier proposal that they include in Form 323-E gender, race, or ethnicity information for reported individuals, similar to revisions the Commission adopted for commercial stations in Form 323.⁷ Though the Commission has yet to address this earlier proposal, it now seeks to add the CORES FRN requirement to the information collected for all identified individuals in Form 323-E.⁸ In making this proposal the Commission acknowledges

⁶ As used in the *Sixth Further Notice*, a CORES FRN is an FRN obtained from the Commission’s Registration System (CORES) using a taxpayer identification number (TIN), either an employer identification number (EIN) for an entity, or for an individual their social security number.

⁷ *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, (2009) (“*Fourth Further Notice*”).

⁸ While the Commission’s proposed requirement for a CORES FRN includes reported entities and individuals, these comments focus on the requirement as applied to individuals.

and asks for comment on National Public Radio's ("NPR") objections set forth in earlier comments.⁹ In particular, the Commission notes that the NPR Group stated that a CORES FRN requirement for Form 323-E would raise "unique privacy issues and administrative burdens" for noncommercial licensees; that the governing boards of noncommercial licensees are composed of members that include elected officials, political appointees, or volunteers who receive no compensation for their service; and that none of these individuals hold any equity interest in the station and would not provide meaningful "ownership" information to the Commission. Without specifically addressing these matters the Commission proposes the CORES FRN requirement, suggesting it has reached the conclusion, if perhaps tentative, to reject the concerns and matters the NPR Group raises.

The Universities support the NPR Group's comments and urge the Commission to reconsider its apparent conclusions and not apply a CORES FRN requirement to Form 323-E. The problems the NPR Group describes if such a requirement is adopted are very real. It would impose a significant burden on many noncommercial licensees, particularly public or private educational institutions; the requirement is not necessary for the veracity of race, gender and ethnic information that may be provided in Form 323-E if that aspect of the Commission's

⁹ Comments the Commission attributes to NPR actually were joint comments submitted on behalf of several entities representative of various noncommercial broadcast interests. See Reply Comments of The Association of Public Television Stations, The Corporation for Public Broadcasting, National Public Radio, and the Public Broadcasting Service, filed July 13, 2009 ("NPR Reply Comments"). NPR separately joined the Association of Public Television Stations, Station Resource Group and Pacifica Foundation in raising objections to the CORES FRN proposal in ex parte meetings with Media Bureau staff. See Letter from Julie M. Kearney, Esq., Counsel for National Public Radio, et al., to Marlene H. Dortch, Secretary, FCC (November 19, 2009) ("NPR Letter"), cited at footnote 87 of the *Sixth Further Notice*. For purposes of these comments the parties making the previously submitted comments attributed to NPR in the *Sixth Further Notice* are referred to as the "NPR Group."

proposal in the *Fourth Further Notice* is ultimately adopted; and absent the availability of a Special Use FRN it would prevent many licensees from filing a complete Form 323-E.

DISCUSSION

A. There is No Nexus Between the Commission's Proposed CORES FRN Requirement for Form 323-E and its Stated Goals.

The Commission proposes to require the inclusion of a CORES FRN for all individuals reported on Form 323-E without explicitly explaining why it believes this proposal is appropriate for noncommercial broadcasters. The Commission cites the NPR Group's comments in opposition, but nowhere does it address those objections. The logical assumption is that the Commission believes a CORES FRN requirement is necessary for noncommercial entities for the same reason as commercial entities filing Form 323. That is, to improve the reliability, quality, and usability of the data which is used to track trends in media ownership by individuals with particular racial, ethnic, and gender characteristics.¹⁰ What is missing from the Commission's proposal, however, is any discussion regarding how such information for noncommercial stations would actually contribute to or further the Commission's ability to track trends in media ownership. This is particularly notable given that the NPR Group demonstrated that such information for noncommercial broadcasters would be unhelpful and potentially misleading.¹¹ If there is no connection between the data collected and the reason it is collected then the presumed predicate for requiring a CORES FRN in Form 323-E doesn't exist.

The Commission has yet to define what "ownership" means in the noncommercial broadcasting context. The lack of a clear understanding of that core question means the

¹⁰ *Sixth Further Notice* at paras. 15-16.

¹¹ See Comments of the Association of Public Television Stations, the Corporation for Public Broadcasting, National Public Radio, and the Public Broadcasting Service, filed June 26, 2009 at 6-7 ("NPR Comments").

collection of race, gender and ethnic data in Form 323-E will not contribute to the Commission's understanding of media "ownership" trends. To the contrary, it could reduce the validity and usefulness of the collected information if noncommercial station data is aggregated with commercial station data.¹²

The Commission recognizes that the structure and organization of noncommercial licensees raise difficult issues in determining what actually constitutes ownership in the noncommercial context.¹³ These issues have remained unresolved for a considerable time. In 1989 the Commission issued a Notice of Inquiry regarding the establishment of guidelines for determining when a transfer of control has occurred due to changes in the governing board of different types of noncommercial licensees.¹⁴ Parties commenting in response to the NCE NOI generally agreed that there are fundamental differences between for-profit commercial license holders, and noncommercial licensees. These differences raise significant questions whether the Commission's attribution rules applicable to commercial licensees, concepts of control and transfers of control, and other rules are appropriate for noncommercial licensees.¹⁵ The Commission failed to resolve these questions in the context of the NCE NOI, and after 13 years terminated that proceeding.¹⁶

Before the Commission can apply a CORES FRN requirement to Form 323-E filers it must determine whether the ownership and control of noncommercial licensees is similar to commercial licensees. If not, the stated reasons for the information and data collected in Form

¹² *See Id.*; NPR Letter.

¹³ *Fourth Further Notice* at para. 28 and footnote 69.

¹⁴ *Transfer of Control of Certain Licensed Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403 (1989) ("NCE NOI").

¹⁵ *Fourth Further Notice* at footnote 69.

¹⁶ *In re Termination of Rulemaking Proceedings*, Order, FCC No. 02-3 (January 11, 2002).

323 are not applicable to noncommercial broadcasters. The Commission’s summary of comments received in response to the *NCE NOI*¹⁷ demonstrates why the Commission has been unable to show a similar need for noncommercial stations to provide data collected in Form 323 – there are too many fundamental differences in who or what noncommercial licensees are, and how they are structured, organized and operate.

The Commission justifies and explains the appropriateness of the CORES FRN requirement for commercial broadcast licensees citing similar reporting requirements for wireless services in Form 602. It states “that CORES FRN reporting was justified for all attributable interest holders on Form 602 because persons or entities with attributable interests ‘have a significant stake in the venture and reap significant benefits from the award of the license,’ and because ‘[the CORES FRN requirement] is directly relevant to the qualifications of the applicant for a wide variety of purposes, including spectrum cap and cross-ownership rules, eligibility for small business status, and foreign ownership.’”¹⁸ Attributable interest holders in commercial broadcasters generally have a stake or operational interest in the licensee, reap significant benefits from the station’s license, and their interests are subject to the Commission’s broadcast multiple-ownership and cross-ownership rules.

This is not the case for noncommercial broadcasters. As noncommercial licensees are not-for-profit entities, their officers and directors typically have no significant stake in the venture and do not reap significant benefits from the award of a license (at least in a financial sense). Members of governing boards usually are volunteers or receive minimal compensation

¹⁷ *Fourth Further Notice* at footnote 69.

¹⁸ *Sixth Further Notice* at para. 13 and footnote 57, citing *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11488, para. 29 (1999).

for their service.¹⁹ The Commission's broadcast multiple and cross-ownership interest rules do not apply to noncommercial licensees.²⁰

For many noncommercial licensees, such as educational institutions and government or quasi-government entities, the operation of their broadcast stations is a very small part of their overall mission and activities.²¹ KU is a public university. The Board of Regents that supervises KU is the governing board of six state universities; the coordinating board for 32 public higher education institutions (seven public universities, 19 community colleges, and six technical colleges); administers the state's student financial aid, adult education, GED, and career and technical education programs; authorizes private proprietary schools and out-of-state institutions to operate in Kansas; and administers the Kan-ed network (a statewide network providing broadband internet access and distance learning capabilities for schools, hospitals, and libraries).²² It is an understatement to say that the operation of KU's broadcast stations is not on the Board's agenda or a matter about which the Board takes note in the course of its meetings. It has no involvement in the operation of KU's stations. Some or many members of the Board may not even know about the university's broadcast licenses and almost certainly don't know about FCC-related obligations attached to those licenses.

¹⁹ Members of KU's Board of Regents generally serve their terms while continuing their full time employment or other activities. The Board has one or two-day monthly meetings from September through June. Its members receive some compensation, subsistence allowances, mileage and other expenses as authorized pursuant to Kansas law and appropriations provisos. *See* Kansas Board of Regents Policy and Procedures Manual (1995) Chapter I, Article I, Section 1, and Chapter II, Section A.1.c. Members of SU's Board of Trustees are essentially volunteers who may receive travel allowances.

²⁰ 47 CFR Section 73.3555(f).

²¹ The same may be true for at least some religious institution licensees.

²² *See* http://www.kansasregents.org/about_kansas_board_of_regents.

A similar situation exists for a large private educational institution such as SU. The 60 voting members of its Board of Trustees have as their primary legal responsibility protecting and managing SU's physical and financial assets. The Board has the authority to oversee SU's academic programs and administrative operations. SU has 14 schools and colleges, and 22 departments and offices within the overall university. In carrying out its overall responsibilities the Board has no direct or indirect contact with or involvement in the operation of SU's broadcast station.

Though the Universities identify members of their respective governing boards in their Form 323-E filings, it is by no means certain that the board members have the type of cognizable interest in the Universities' broadcast stations that the Commission would recognize in a commercial setting. Where officers or directors of a commercial licensee or parent company of a licensee have no real or practical involvement in the operation of the licensee's station(s), they may be exempt from cognizable attribution and exempt from inclusion in the licensee's or parent company's Form 323. This exemption is accomplished either through a waiver request for officers or directors of a licensee that engages in businesses in addition to its primary broadcast business, or the submission of a supporting statement in Form 323 for officers and directors of a parent company if their duties and responsibilities are wholly unrelated to the broadcast licensee.²³ These exemptions from attribution also are described in the instructions to Form 323. Based on these standards, members of the Kansas Board of Regents and SU's Board of Trustees would potentially qualify for exemption with respect to the operation of the Universities' broadcast stations.

²³ See 47 CFR Section 73.3555(g).

Yet for noncommercial stations, the Commission lacks rules specific to their unique structures and who should or should not be included in Form 323-E. Form 323-E has no instructions describing which positions are deemed attributable for reporting purposes, nor is there a similar explanation as in Form 323 explaining how certain officers and directors may be exempt from attribution in the ownership report. Form 323-E contains only the stated requirement to “list officers, members of [the] governing board, and holders of 1% or more ownership interest, if any.”²⁴

This situation extends beyond just the members of a university’s governing board. There also is the potentially more complex issue regarding the multitude of university officers who have no involvement in the operation of their school’s broadcast stations. For example, in addition to the Board of Regents and Chancellor, KU’s administration includes at least 18 administrative leaders, 12 academic deans and four constituent governance senates. Many of these administrators have titles that include “Vice Chancellor,” “Provost,” “Vice Provost,” and “Director.” In the case of SU, the Chancellor’s Cabinet is involved in budget and policy decisions for the university and is composed of 19 senior-level administrators who head a major division of the university. These individuals have titles that include “Vice Chancellor,” “Executive Vice President,” “Senior Vice President,” “Vice President,” and “Secretary.” Many of the positions that don’t include a typical “officer” position in their title are functionally the same as or similar to an attributable corporate “officer,” while others are more analogous to a (non-attributable) manager. Analogously, positions that include an “officer” position in their title sometimes are equivalent to a manager in the traditional corporate setting. How many of these positions are or should be reported in Form 323-E? The Commission provides few if any

²⁴ FCC Form 323-E, General Instructions and Section II, Question 7.

guidelines. The question of who is an attributable “officer” or “director” in the noncommercial broadcast context is far more complicated and muddled than it is for commercial broadcasters.²⁵

If the members of a noncommercial licensee’s governing board, or its officers, have no actual involvement in the operation of the licensee’s broadcast station, do they have the type of cognizable “ownership” interest the Commission considers for the purpose of promoting diverse ownership of broadcast stations? As demonstrated, many of the individuals identified in a Form 323-E report have no involvement in broadcast station operations. They would or could be exempt from inclusion in a Form 323 under Section 73.3555(g). If information reported in Form 323-E includes individuals who would not be reported in a Form 323, the use of race, gender and ethnic information for such persons identified in the Form 323-E will not have the same practical applicability or usefulness as the data for commercial licensees. Consequently, it would skew the Commission’s information collection efforts, rendering less reliable any analysis based on aggregated data including both commercial and noncommercial stations.²⁶

B. A CORES FRN Requirement for Individuals Reported in Form 323-E Would be Unduly Burdensome.

Beyond potentially resulting in less useful or “accurate” information, thereby thwarting the Commission’s stated purpose for a CORES FRN requirement for all individuals listed in Form 323-E, such a requirement could be immensely burdensome, if not impossible to meet for many licensees. It is the Universities experience that obtaining basic information about the

²⁵ The focus of these comments is on educational institutions generally, and more specifically large public or private universities such as KU and SU. Other types of noncommercial licensees will present their own unique analytical difficulties, such as large religious institutions, and government or quasi-government entities. *See e.g. Fourth Further Notice* at para. 28 and footnote 69.

²⁶ Even if the noncommercial data were examined separately it would have less viability for the Commission’s diversity analysis as it would include numerous individuals who have no actual role or involvement with station policies and operation.

members of their governing boards, other than what is publicly available, is sometimes difficult. This is due to several reasons. The managers of the stations, who are directly involved in the stations' operation and generally have primary responsibility for preparing or coordinating the filing of Form 323-E (and other FCC filings), have no contact or interaction with the governing boards. University officials, to whom the station managers directly report, also may have little or no direct contact with the governing boards. Rather, such communications usually are handled through someone in the school's Chancellor's office or a separate university office or department having responsibility for all relations with the governing board. Thus, stations are dependent on separate university offices or officials, who may themselves have no involvement with station operations or FCC related matters, to obtain information required to complete Form 323-E.

The layers through which information requests must pass means that it is sometimes difficult, and time consuming, to obtain basic information currently required in Form 323-E, such as an address for each governing Board member. The other university offices or officials contacted for such information, and in the case of KU the office of the Board of Regents, may not have such information available or may be unwilling to provide such information to station management. This is not an unusual situation, as most governing board members are prominent leaders within their communities or professions, including government, education, business, law, medicine, arts, entertainment and sports. These individuals value their privacy and do not expect to give up that privacy because they have joined an educational institution's governing board.²⁷ Most individuals consider their social security number a far more "private" matter than where

²⁷ When an address for an individual is not available, the Universities have used either the business office address for the board member, if available, or when that is not available they have used the Board's business office address.

they live or work, and such information will be even harder to obtain from individuals than basic address information.

Members of such governing boards generally are unaware that when they agree to volunteer or serve on the board that they become subject to Commission regulations. This is another way in which members of an educational institution's governing board (and the institution's officers) are different from officers and directors of a commercial broadcaster or its parent company – they have no expectation going in that they will have an obligation to provide personal information to the Commission. Given the Universities' stations' experience, it is highly likely that some or many Board members will not provide their social security number, and perhaps other information necessary to enable the university to obtain a CORES FRN number for that individual.²⁸ It also is highly probable that many of these individuals, unwilling to provide their social security number to the university, will not on their own register with the Commission to obtain a CORES FRN.

The broadcast station's management that prepares and ultimately submits Form 323-E has no direct contact with, has little or no influence over, and has no ability to "force" a recalcitrant Board member either to provide their private information necessary to obtain a CORES FRN, or obtain a CORES FRN on their own and then provide that information to the station's management. It is difficult to determine the extent to which the Universities' officials responsible for interacting with their governing boards would be willing or able to try to "force" such information from a non-responsive governing board member.

²⁸ In addition to providing their social security number, an individual registering for a CORES FRN also must provide their address, which as noted is not always available to the Universities' stations.

Even if the information necessary to obtain a CORES FRN is ultimately provided, obtaining that information may take considerable time and effort on the part of station management and other university officials, who are not involved in station operations, but are responsible for communicating with the board's office or its members. In the case of SU it would mean obtaining and coordinating the information from the 60 voting board members (assuming the 53 life members are not attributable because they don't vote). This likely would require many follow-up contacts with at least some board members who fail to respond to the initial inquiry or request for information (whether or not the failure to respond is due to lack of time, oversight or unavailability, as opposed to outright recalcitrance). It is not just the few minutes it might take to complete the database registration process.²⁹ The communications efforts required to get full compliance from all board members may be quite substantial and time consuming for University personnel who have no other connection to or involvement with the broadcast station. Further, it is not inconceivable that such efforts could create unwanted friction in the relationship between the university and members of the governing board who are unwilling or disinclined to provide their private information for a matter in which they have no direct involvement or connection.

C. If the Commission Adopts a CORES FRN Requirement for Form 323-E it Must Retain the Availability of Special Use FRNs for Individuals Who Do Not Provide CORES FRN Information.

The Commission created the Special Use FRN in response to industry concerns about the inability of Form 323 filers to obtain the necessary information to include a CORES FRN for a reported individual.³⁰ Although these concerns persist in the commercial broadcast sector, the Commission nonetheless proposes eliminating the Special Use FRN. The concerns expressed by

²⁹ See *Sixth Further Notice* at para. 16.

³⁰ *Sixth Further Notice* at para. 8.

commercial broadcasters are equally if not more applicable to many noncommercial broadcasters that would have the added complication of obtaining such information through potentially multiple administrative layers from individuals who have no tangible connection with the station. If the Commission is intent on applying a CORES FRN requirement to noncommercial broadcasters, it must retain the option of a Special Use FRN for those situations when an individual refuses to provide the information necessary to obtain a CORES FRN and refuses to directly register with the Commission and provide a CORES FRN to the 323-E filer.

As described above, there are potentially significant costs and burdens a CORES FRN requirement would impose on many noncommercial broadcasters. The Commission asserts that it believes the benefits of eliminating the Special Use FRN outweigh any costs.³¹ However, the Commission fails to demonstrate why eliminating the Special Use FRN, is “essential” for the Commission “to improve the reliability, quality and usability” of ownership data it collects, the asserted benefit.³² The Universities demonstrate herein, as did NPR Group in the NPR Reply Comments, that inclusion of “ownership” information from noncommercial stations in Form 323-E is as likely to reduce the “reliability, quality and usability” of data the Commission collects. The Universities fail to see how the Commission can benefit if it includes spurious information in its data collection.

The Commission’s stated goal is to match ownership data with specific owners.³³ Yet it fails to demonstrate how or why the Special Use FRN has not allowed the Commission to do that. The Commission states that, at least in the commercial context, the FRN “fulfills a need for unmistakable identity in the face of often complex ownership structures involving numerous

³¹ *Id.* at para. 16.

³² *Id.*

³³ *Id.*

parties and multiple layers or links in the ownership chain, a need which cannot be fulfilled by identification based entirely on names and addresses.”³⁴ The only example the Commission gives (at footnote 21) is the inability to determine whether a listing for “John Smith” in one report and a listing for “J. Smith” in a different report are the same person absent a unique identifier. However, the Commission does not explain why the combination of a specific address for an individual in combination with that person’s name is not a sufficient degree of uniqueness. While there are many “John Smith’s” or “J. Smith’s,” only one of them will reside at a particular address. A Special Use FRN based on an individual’s name and address should provide sufficient uniqueness comparable to a CORES FRN that the Commission claims to need to assure the reliability of collected data.³⁵ This is the case even if the address is a business address (*e.g.*, an individual’s personal business, or a governing Board’s business address), as the combination of the individual’s name and a specific address are just as unique in the ownership report context as a residential address.

The continued availability of a Special Use FRN, if the Commission ultimately applies the CORES FRN requirement to noncommercial stations, would be critically important to allowing many noncommercial licensees to meet their Form 323-E filing obligation. Though the Commission proposed eliminating the Special Use FRN, it also stated that it wishes “to ensure that a filer will still be able to timely file a Form 323 and to report the recalcitrant attributable interest holder.”³⁶ In the noncommercial context, where it is highly likely that some individuals will not provide a responsible filer with a valid CORES FRN or the ability to obtain one, the

³⁴ *Sixth Further Notice* at para 5.

³⁵ If someone is intent on deceiving the Commission or making it difficult or impossible to track their ownership interests, there is nothing in the database registration system that precludes that individual from using a fake social security number to obtain multiple CORES FRN’s.

³⁶ *Sixth Further Notice* at para 17.

Commission must provide a means that would allow the filing party to otherwise comply with its Form 323-E filing obligation. The continued availability of the Special Use FRN is the best method for doing so if the Commission adopts an FRN requirement for Form 323-E.

The Commission suggests that it could use the Special Use FRN, and the implicit indication of an individual's unwillingness to comply with a CORES FRN requirement, as the basis for a forfeiture action against such individuals.³⁷ This raises a number of concerns in the noncommercial context. The applicability of the Commission's FRN obligation, set forth in Section 1.8002 of its rules, to governing board members of at least certain noncommercial broadcasters (such as the Universities), is dubious at best. Section 1.8002 applies to "anyone doing business with the Commission." Given the Commission's ongoing inability to define what "ownership" means in the context of noncommercial broadcasters, how would the "doing business" with the Commission requirement apply to the Universities' governing boards? Is a political appointee by the Governor to a state's Board of Regents, who has no involvement with the operation of one of its constituent school's broadcast stations, "doing business" with the Commission? The same question applies to members of an educational institution's Board of Trustees who similarly have no involvement with the operation of the school's broadcast station. Is the Commission going to pursue forfeiture proceedings against members of a state's Board of Regents, or a university's Board of Trustees? How would the Commission's inability to define "ownership" interests in the noncommercial context affect its obligations with respect to a person who does not hold a Commission authorization to: (a) send a citation of the violation charged, and (b) provide a reasonable opportunity for a personal interview with a Commission official at the nearest field office to the person's place of residence, before the Commission can determine a

³⁷ *Id.*

forfeiture liability?³⁸ How would the Commission address these matters in the context of a noncommercial station license held by other types of entities, such as government or quasi-governmental bodies, such as a city or school district, or a religious institution?

CONCLUSION

The Universities have shown that noncommercial broadcasters, particularly large public and private universities, have unique “ownership” structures that make application of an FRN requirement for their officers and directors more burdensome and less practical than in the commercial broadcast context. They have shown that there are no similar potential benefits to a CORES FRN requirement for noncommercial broadcasters compared to the commercial context and Form 323 filers and their attributable interest holders. To the contrary, the Commission continues to lack a meaningful definition of what constitutes “ownership” in the noncommercial context. The aggregation of information in Form 323-E filings with Form 323 filings would likely lead to less accurate and less reliable data for the Commission’s stated purpose – tracking media ownership trends to better promote diverse ownership of broadcast stations – because it would include information about persons having no actual involvement in or influence over the operation of noncommercial stations.

Nonetheless, if the Commission is intent on requiring noncommercial broadcasters to include FRN information for each individual listed in their Form 323-E, the Commission must allow the continued availability of a Special Use FRN. Special Use FRN’s provide a sufficiently unique identifier for the Commission’s stated purposes and will allow noncommercial broadcasters to meet their Form 323-E filing obligations when CORES FRN information is not otherwise available.

³⁸ See 47 USC Section 503(b)(5).

Respectfully submitted,

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Dated: February 14, 2013